

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL, INC., COMEDY)
PARTNERS, COUNTRY MUSIC.)
TELEVISION, INC., PARAMOUNT)
PICTURES CORPORATION, and BLACK)
ENTERTAINMENT TELEVISION, LLC,)
)
Plaintiffs,)
)
vs.) NO. 07-CV-2203
)
YOUTUBE, INC., YOUTUBE, LLC,)
and GOOGLE, INC.,)
)
Defendants.)
)
)
THE FOOTBALL ASSOCIATION PREMIER)
LEAGUE LIMITED, BOURNE CO., et al.,)
on behalf of themselves and all)
others similarly situated,)
)
Plaintiffs,)
vs.) NO. 07-CV-3582
)
YOUTUBE, INC., YOUTUBE, LLC, and)
GOOGLE, INC.,)
)
Defendants.)
)

VIDEOTAPED DEPOSITION OF FRANCK CHASTAGNOL

SAN FRANCISCO, CALIFORNIA

WEDNESDAY, DECEMBER 10, 2008

DECEMBER 10, 2008

9:57 a.m.

VIDEOTAPED DEPOSITION OF FRANCK CHASTAGNOL,
SHEARMAN & STERLING, 525 Market Street,
San Francisco, California, pursuant to notice,
before ANDREA M. IGNACIO HOWARD, CLR, CCRR, RPR,
CSR License No. 9830.

A P P E A R A N C E S:

FOR THE PLAINTIFFS VIACOM INTERNATIONAL INC.:

JENNER & BLOCK

By: MICHAEL DESANCTIS, Esq.

SARAH A. MAGUIRE, Esq.

1099 New York Avenue, NW, Suite 900

Washington, D.C., 20001

(202) 637-6357 mdesanctis@jenner.com;

smaguire@jenner.com

FOR THE LEAD PLAINTIFFS AND PROSPECTIVE CLASS:

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

By: BENJAMIN GLADSTON, Esq.

12481 High Bluff Drive, Suite 300

San Diego, California 92130-3188

(858) 720-3188 beng@blbglaw.com

A P P E A R A N C E S (Continued.)

FOR THE DEFENDANTS YOUTUBE, INC., YOUTUBE, LLC and
GOOGLE, INC.:

MAYER BROWN LLP

By: MATTHEW D. INGBER, Esq.

BRIAN WILLEN, Esq.

1675 Broadway

New York, New York 10019

(212) 506-2146 mingber@mayer.com

bwillen@mayer.com

WILSON SONSINI GOODRICH & ROSATI

By: MICHAEL H. RUBIN, Esq.

650 Page Mill Road

Palo Alto, California 94304-1050

(650) 849-3311 mrubin@wsgr.com

ALSO PRESENT:

ADAM L. BAREA, Litigation Counsel, Google

KELLY TRUELOVE, Consultant

KEN REESER, Videographer.

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11:34:19 Q But if -- if the future -- if the piece of
11:34:23 content in the future instance is in any way different
11:34:28 from the original piece of content, then it would have
11:34:33 its own hash code; correct?

11:34:35 MR. INGBER: Objection to form.

11:34:37 THE WITNESS: What I know is that -- what I
11:34:49 know is that the hash code is -- is a unique
11:34:57 identifier of a particular video file, and that if the
11:35:09 file is slightly different, the hash code will be
11:35:13 different.

11:35:16 MR. DESANCTIS: Q. And, therefore, the --
11:35:17 the hash code that was assigned to the initial piece
11:35:21 of content would not be useful in finding the
11:35:24 subsequent piece of content that is a little bit
11:35:27 different; correct?

11:35:29 MR. INGBER: Objection; vague.

11:35:33 THE WITNESS: So if you take one file and you
11:35:35 generate a hash code, then you take the second file,
11:35:38 which is slightly different, and you generate a hash
11:35:40 code, then the hash code won't -- won't match.

11:35:44 MR. DESANCTIS: Okay.

11:35:45 THE WITNESS: That's -- that's the way I
11:35:47 understand hash code to -- to work.

11:35:50 MR. DESANCTIS: Q. Are there other tools

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12:28:34 But this document, which comes from Kevin
12:28:38 Donahue and Chris Maxcy, who are part of the business
12:28:41 development team, states "The goal of this feature is
12:28:46 to encourage content partners to leave more of their
12:28:48 content on the site."

12:28:50 Q My question to you is, do you recall ever
12:28:55 hearing or being told that the goal of the feature was
12:29:00 to encourage content partners to leave more of their
12:29:03 content on the site?

12:29:14 A It -- that was one of the goal when we
12:29:26 launch, one of the goal.

12:29:28 Q Okay. Thank you. That was the question.
12:29:33 You said this was one of the goals. Were
12:29:36 there other goals that were discussed at the time of
12:29:38 launch?

12:29:41 A Yes.

12:29:41 Q What were those?

12:29:46 A So I will walk -- walk you through the -- I
12:29:53 think the -- the -- the best way from -- you know,
12:29:58 again, I'm on the engineering side, you know.

12:30:00 Q Yes.

12:30:01 A And I -- my -- my view is only on the
12:30:05 engineering side, and when I look at the Claim Your
12:30:09 Content tool that, you know, that -- that my team and

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2 12:42:43 specific time?

3 12:42:43 MR. DESANCTIS: In -- at the -- at the launch

4 12:42:47 in 2007.

5 12:42:48 THE WITNESS: So --

6 12:42:49 MR. DESANCTIS: Let me -- let me withdraw the

7 12:42:50 question.

8 12:42:50 THE WITNESS: So what is the question again?

9 12:42:52 MR. DESANCTIS: Yeah, let me withdraw the

10 12:42:53 question. It was confusing.

11 12:42:54 Q I'm not talking about specific to YouTube.

12 12:42:56 In general, how does a fingerprint -- how does an

13 12:42:59 audio fingerprint system compare two pieces of

14 12:43:05 content? How does it do it?

15 12:43:06 MR. INGBER: Objection to form; it's

16 12:43:08 overbroad.

17 12:43:08 You can try to answer.

18 12:43:10 THE WITNESS: I mean, so it -- you know,

19 12:43:17 first of all, every single system is -- you know, is

20 12:43:21 different, but at a high level, you know, a

21 12:43:23 fingerprinting system would extract characteristics of

22 12:43:29 the reference content and characteristics of the probe

23 12:43:38 and use these characteristics and would compare these

24 12:43:45 characteristics to determine the likeliness of -- of a

25 12:43:52 match.

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16:18:06 2 Audible Magic.

16:18:06 3 A Uh-huh.

16:18:07 4 Q Were you coordinating with the business
16:18:08 5 development team as you were doing that?

16:18:10 6 A We had some discussions.

16:18:11 7 Q Okay. So with whom?

16:18:14 8 A So a number of people. Probably Chris Maxcy.

16:18:18 9 Q Okay.

16:18:21 10 A And a number of other people in the team. I
16:18:28 11 don't -- I -- I don't recall, you know, the -- you
16:18:31 12 know, the -- who was or the list of people who were
16:18:36 13 involved, but yeah there were -- there were a number
16:18:41 14 of BD, you know, BD folks involved in the -- in these
16:18:48 15 deals.

16:18:49 16 Q Let's look at this. 68.

16:19:18 17 (Document marked Chastagnol Exhibit 13
16:19:19 18 for identification.)

16:19:19 19 MR. DESANCTIS: Let me show you what's been
16:19:20 20 marked -- being mark as Chastagnol Exhibit 13. This
16:19:29 21 is a document Bates labeled AM 001241 through 1244,
16:19:43 22 and the cover e-mail, the top e-mail, is from you to
16:19:48 23 Jim Schrempp dated Friday December 22nd, 2006, and I'd
16:20:14 24 like to direct your attention to the bottom of page
16:20:16 25 one.

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16:20:25 2 Actually, let me back up. On page one you're
16:20:35 3 sending an e-mail to Jim Schrempp and below your
16:20:39 4 e-mail is the heading "Requirements for integration
16:20:42 5 with Audible Magic," and that's the document that goes
16:20:46 6 on for the next four pages.

16:20:51 7 Q Are these the terms of the deal between
16:20:53 8 YouTube and Audible Magic as they existed at that --
16:20:56 9 on that date?

16:20:58 10 A I don't remember.

16:21:01 11 Q Okay. I'd like to direct your attention to
16:21:23 12 the bottom of page one. It's under the heading
16:21:29 13 "Requirements for integration with Audible Magic,
16:21:35 14 Phase 1." Next line, "Database setup," and the text
16:21:43 15 reads, "AM should host and setup 2 reference
16:21:48 16 fingerprint databases: One populated with Warner
16:21:50 17 content (referenced as 'WarnerDB' hereafter)," and
16:21:56 18 "One populated by YouTube via the new fingerprint add
16:22:00 19 API (this DB is referenced as 'YouTubeDB' hereafter)."

16:22:08 20 Were you involved in negotiating these terms
16:22:14 21 with Audible Magic?

16:22:17 22 A I was involved on the engineering side.

16:22:21 23 Q What is -- can you describe what that
16:22:26 24 involvement was?

16:22:28 25 A Making sure that the requirements would meet

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16:22:32 2 the needs that we had for -- for our product. So
16:22:38 3 meeting the needs on the engineering side of what I
16:22:42 4 was tasked with building.

16:22:43 5 Q Okay. So why, then, did or how did a
16:22:52 6 database populated with Warner content satisfy the
16:22:57 7 needs? Well, actually, there's two databases here.
16:23:00 8 One is populated with Warner content. One is
16:23:03 9 populated by YouTube.

16:23:05 10 Can you describe what the database populated
16:23:08 11 by YouTube was and what YouTube was populating it
16:23:12 12 with?

16:23:12 13 MR. INGBER: Objection to form; vague as
16:23:19 14 to -- as to time and compound.

16:23:24 15 MR. DESANCTIS: At the time -- at the time of
16:23:25 16 this document, which is September 22nd, 2006.

16:23:31 17 THE WITNESS: Yes, I can describe the ad API.

16:23:34 18 MR. DESANCTIS: Yeah.

16:23:35 19 Q Well, right. I'm -- I'm wondering, yes, can
16:23:40 20 you please describe the database that was populated by
16:23:41 21 YouTube and what it was populated with?

16:23:45 22 A Okay.

16:23:51 23 MR. INGBER: Same objections.

16:23:52 24 Go ahead.

16:23:54 25 THE WITNESS: So -- so this -- I mean, first

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16:23:57 2 of all, this was the -- the design of the system. So
16:24:01 3 these are the requirements for designing the system.
16:24:04 4 The system wasn't in place yet, and so, yeah, the --
16:24:12 5 the idea of this add API which, by the way, was
16:24:17 6 something that Audible Magic didn't have and that we
16:24:20 7 specifically requested for our needs as an addition to
16:24:25 8 the standard solution, was the ability for YouTube to
16:24:30 9 generate reference fingerprints and submit them to
16:24:35 10 Audible Magic, and these fingerprints would get stored
16:24:41 11 in what is referred here in this document as YouTube
16:24:45 12 DB. That's -- so that's what it was.

16:24:50 13 MR. DESANCTIS: Q. Well, why was YouTube
16:24:52 14 submitting reference fingerprints to Audible Magic?
16:24:55 15 What purpose did that serve?

16:24:57 16 MR. INGBER: Objection to form; lacks
16:24:59 17 foundation.

16:25:00 18 MR. DESANCTIS: Sorry.

16:25:01 19 Q Does it serve any purpose?

16:25:04 20 MR. INGBER: Same objection.

16:25:06 21 THE WITNESS: Yes. I mean, it -- I mean, on
16:25:12 22 the engineering side, it served a purpose of being
16:25:18 23 able to, itself, add fingerprints to the Audible Magic
16:25:22 24 database without relying on the -- the content owner
16:25:25 25 having any sort of relationship with Audible Magic.

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16:25:31 2 We wanted to be in control of being able to augment
16:25:35 3 this database.

16:25:38 4 MR. DESANCTIS: I see.

16:25:39 5 Q So -- so what -- what fingerprints were -- it
16:25:47 6 sounds to me like YouTube was generating its own
16:25:50 7 fingerprints that it was submitting to Audible Magic
16:25:53 8 for inclusion in this YouTube database; is that
16:25:56 9 correct?

16:25:57 10 A That's correct.

16:25:57 11 Q So what was YouTube generating fingerprints
16:26:01 12 of that it was submitting to Audible Magic for
16:26:04 13 inclusion in the reference database?

16:26:08 14 A So again, it -- yeah.

16:26:11 15 MR. INGBER: Go ahead. You can answer.

16:26:13 16 THE WITNESS: So again, the system wasn't in
16:26:15 17 place at that time, but when we launched the system,
16:26:19 18 content owners were able to -- to provide content
16:26:24 19 directly to -- to YouTube and -- and we would -- we
16:26:36 20 would, ourself, generate fingerprints and add them to
16:26:38 21 the Audible Magic database as opposed to content
16:26:44 22 owner.

16:26:44 23 It was the choice of the content owner;
16:26:46 24 right. I mean, giving them options. You want to work
16:26:53 25 with Audible Magic to augment, you know, to -- to put

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16:26:55 2 your reference in their database. You can, you know,
16:26:59 3 either work directly with them, if it's more
16:27:01 4 convenient for you, or you can do it with us. It's --
16:27:05 5 you have a choice.

16:27:08 6 We just, you know, on the engineering side,
16:27:11 7 you know, I -- I wanted to make sure that we had this
16:27:15 8 ability to -- to put this -- this data in Audible
16:27:21 9 Magic database and not relying on them to -- to add
16:27:24 10 the data.

16:27:31 11 MR. DESANCTIS: Q. So I still want to stay
16:27:32 12 on this notion of the -- of what YouTube was
16:27:37 13 fingerprinting for inclusion in the YouTube database.

16:27:40 14 A Uh-huh.

16:27:41 15 Q Was it all videos on YouTube?

16:27:49 16 A No.

16:27:50 17 Q How did -- therefore, it's some subset of all
16:27:57 18 videos on YouTube; is that correct?

16:27:59 19 A Yes.

16:27:59 20 Q How is the decision made what would be
16:28:04 21 fingerprinted and what would not be fingerprinted?

16:28:06 22 MR. INGBER: Objection to form; lacks
16:28:08 23 foundation.

16:28:09 24 THE WITNESS: The content which was
16:28:19 25 fingerprinting was the content provided to YouTube by

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16:28:24 2 content owners as opposed to we didn't want to
16:28:29 3 generate reference fingerprints of user-uploaded
16:28:34 4 content, which we didn't know what it was and didn't
16:28:38 5 have any idea of a policy associated with.

16:28:43 6 MR. DESANCTIS: I see.

16:28:43 7 Q So if a -- if a content owner itself posts
16:28:52 8 its own content to YouTube for monetization purposes,
16:28:59 9 it could -- it could have asked YouTube to generate a
16:29:03 10 fingerprint for the Audible Magic reference database?

16:29:14 11 A This is not correct.

16:29:15 12 Q Okay. Please tell me how, because I must not
16:29:18 13 have understood your last answer.

16:29:21 14 A The system was designed in such a way that a
16:29:27 15 content owner could provide content to YouTube whether
16:29:31 16 it's -- if it's for monetization, whether it's for
16:29:35 17 track or for block -- could provide content to YouTube
16:29:41 18 and we would generate reference fingerprint regardless
16:29:45 19 of the -- the policy.

16:29:52 20 Q I see.

16:29:53 21 Okay. I'm told we need to change the tape,
16:30:06 22 so let's break and change the tape.

16:30:09 23 MR. INGBER: Okay.

16:30:10 24 THE VIDEOGRAPHER: This is the end of DVD

16:30:15 25 No. 3 in the continuing deposition of Franck

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CHASTAGNOL

17:14:34 MR. INGBER: Video fingerprinting technology

17:14:37 or are you talking about the Video ID tool?

17:14:39 MR. DESANCTIS: Video fingerprinting

17:14:40 technology.

17:14:44 THE WITNESS: I don't recall the specific

17:14:48 dates. It -- the time frame was Q1 2007, to my

17:14:58 recollection.

17:14:59 MR. DESANCTIS: Okay.

17:15:07 Q And at that time there were a number of

17:15:12 third-party companies who were providing video

17:15:16 fingerprinting solutions; correct?

17:15:22 MR. INGBER: Objection; lacks foundation.

17:15:24 THE WITNESS: That might be, yeah. Yes.

17:15:31 MR. DESANCTIS: Q. You don't --

17:15:32 A There may be some companies.

17:15:34 Q You don't know if there were?

17:15:35 A I -- I know there were some companies working

17:15:39 on -- on building a -- a video fingerprinting system.

17:15:46 I -- yeah.

17:15:48 Q But you didn't use any of them; did you?

17:15:52 A No, we did not.

17:15:53 Q Why not?

17:15:56 MR. INGBER: Objection; lacks foundation.

17:16:00 MR. DESANCTIS: You can answer the question.

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CHASTAGNOL

17:31:14 answer your questions.

17:31:16 Q No, that's okay.

17:31:37 Do you recall that part of the reason that --

17:31:47 that you and I -- now I mean you, Franck Chastagnol,

17:31:52 didn't want your team researching the video

17:31:58 fingerprinting technologies that existed in early 2007

17:32:04 was because you wanted your own development to be sort

17:32:09 of untainted by the other technologies that are out

17:32:12 there?

17:32:16 MR. INGBER: Objection to the extent the

17:32:17 first part of your question mischaracterizes the

17:32:20 witness's prior testimony.

17:32:22 You can answer.

17:32:30 THE WITNESS: Right.

17:32:30 So in early 2007, my entire team was focusing

17:32:38 on building the Video ID tool, and so I had several

17:32:42 things in my mind. I wanted them to, you know, focus

17:32:46 on that, get it done. I knew we could build the best

17:32:51 system in the world with the type of outstanding

17:32:53 Google engineers that just joined us. I wanted to go

17:32:58 full speed. We have to get it done.

17:33:01 I mean, many thoughts I was, you know, being

17:33:02 very aggressive with the deadlines for my team, and

17:33:07 first -- sorry, excuse me -- first thing.

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17:33:10 Second thing is at that time literally nobody
17:33:15 had a system out there; right. You know, to my
17:33:19 recollection, there was no -- nobody having, you know,
17:33:23 scalable production ready system, you know, being used
17:33:28 by any website or any serious -- serious company.
17:33:34 So I had all the reasons to -- to believe
17:33:40 that what we -- that -- that was reinforcing --
17:33:42 reinforcing my belief that we had to focus on our own,
17:33:46 right. Competition is still, you know, working on it.
17:33:48 They don't have a product; right. Let's not look in
17:33:51 the mirror. Let's get it done; right.
17:33:53 And so -- so, yeah, what I recall is me
17:33:58 giving clear priority that was -- you know, at that
17:34:02 time, I was tech lead for several engineers, and I had
17:34:05 to tell them, okay, to be clear on the priorities.
17:34:08 Like we have our priority number one is to --
17:34:12 to get this product done. We -- we might have been
17:34:15 approached by different video ID vendors in the
17:34:18 process of developing their own tool and wanting us
17:34:21 to, you know, evaluate or use it; and, you know, and
17:34:26 my guidelines were very clear to -- to my team.
17:34:29 let's -- let's get it done. Let's get our solution
17:34:33 done.
17:34:33 MR. DESANCTIS: Okay.

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2 17:34:38 Q And within the context of telling your team
3 17:34:40 to get the solution done, isn't it the case that you
4 17:34:48 didn't even research the extent to which some of the
5 17:34:54 companies -- some of the third-party companies that
6 17:34:58 were providing video fingerprinting solutions would
7 17:35:00 have worked as an interim solution for Google?

8 17:35:03 MR. INGBER: Objection to form.

9 17:35:05 THE WITNESS: So, you know, in addition to
10 17:35:11 the points, you know, I made earlier, and -- and to
11 17:35:14 your point, you know, one other consideration is IP
12 17:35:17 tainting; right. You don't want, you know, your --
13 17:35:20 your team to be exposed with technology from third
14 17:35:24 party, because then you could end up in a lawsuit and
15 17:35:26 have to do depositions.

16 17:35:31 And so that was -- you know, yeah, that was
17 17:35:34 one -- one consideration, and the other consideration,
18 17:35:40 again, is priority. Doing research, evaluating,
19 17:35:43 testing, you know, look at Audible Magic. It -- it
20 17:35:46 took a while.

21 17:35:47 I knew it would take a while to look at these
22 17:35:50 guys. I mean like, you know, who knows how many out
23 17:35:54 there, you know, were claiming to have a solution.
24 17:35:56 Evaluating every single one of them would have been
25 17:35:59 just, you know, major engineering time investment, and

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17:36:05 at that point, you know, I had several engineers, but
17:36:09 it was still -- you know, I still wanted to -- to make
17:36:12 sure they all focus on -- on -- on this one goal,
17:36:15 clear priority, you know, everyone get this done;
17:36:19 right.

17:36:19 MR. DESANCTIS: Okay.

17:36:21 Q You said it would have been -- hold on.

17:36:40 Talking about third-party video fingerprint
17:36:42 companies that existed at that time, you just said
17:36:46 that "Evaluating every single one of them would have
17:36:49 been just, you know, major engineering time
17:36:51 investment."

17:36:53 Did you investigate any of them?

17:36:58 MR. INGBER: Objection; asked and answered.

17:37:04 MR. DESANCTIS: Q. I'm asking about you,
17:37:06 Franck Chastagnol.

17:37:07 A Me personally, no.

17:37:11 Q Okay. You said you commissioned someone to
17:37:13 look into Vobile, but you did not remember what you
17:37:17 had asked them to do.

17:37:20 How about a company called Avestigo? Did
17:37:27 your team research the capabilities -- the video
17:37:30 fingerprinting capabilities of a company called
17:37:33 Avestigo?

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17:37:34 A Not that I remember.

17:37:35 Q Okay. A company called Auditudo?

17:37:42 A Not that I remember in this time frame.

17:37:44 Q Okay. Did you look at Gracenote for their
17:37:49 video fingerprinting offerings the way you had with
17:37:53 their audio finger -- fingerprinting offerings?

17:37:57 A Not that --

17:37:58 MR. INGBER: Object to form.

17:38:00 THE WITNESS: No, I don't -- I don't remember
17:38:01 looking at Gracenote video fingerprinting solution at
17:38:05 that time.

17:38:05 MR. DESANCTIS: Okay.

17:38:05 Q How about -- are there any others? Any --
17:38:09 any others that -- any besides Vobile that you
17:38:15 researched or had someone on your team research?

17:38:19 MR. INGBER: Objection to form.

17:38:21 THE WITNESS: So -- so just to be clear on
17:38:22 Vobile, I -- my -- my memory, I don't -- I don't
17:38:28 recall any details on Vobile, so I'd like to take this
17:38:31 out of the question, what you asked.

17:38:34 MR. DESANCTIS: Okay.

17:38:38 THE WITNESS: I -- I'm just being very
17:38:39 confused at this point which Vobile, so I don't want
17:38:42 to make any statement because --

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17:38:43 MR. DESANCTIS: Well, I'm sorry.

17:38:44 THE WITNESS: -- I'm not able to, so can you
17:38:46 rephrase?

17:38:47 MR. DESANCTIS: Q. I want to make sure I --

17:38:48 I want to make sure I understand. You -- you're not

17:38:49 clear now as to what company -- what Vobile is?

17:38:56 A Yes. At this point on the -- in the

17:38:58 deposition, I'm not.

17:38:59 Q Okay.

17:39:04 A So could you please rephrase your question,

17:39:07 which was perfectly fine, without Vobile in it; right?

17:39:11 Q Sure. Actually, I think I did, but I'll do

17:39:16 it again.

17:39:19 A Sorry.

17:39:19 MR. INGBER: There was an assumption in your

17:39:20 question about Vobile, I think, that made the witness

17:39:24 uncomfortable.

17:39:38 MR. DESANCTIS: Q. Well, I think it would go

17:39:40 like this: Do you recall researching or having

17:39:49 someone on your team research any third-party provider

17:39:57 of video fingerprinting?

17:40:01 A I don't remember engineers in my team doing

17:40:05 research on video fingerprinting solutions. There

17:40:08 might have been, you know, business development guys

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17:40:14 or product managers doing that. That's entirely
17:40:17 possible.

17:40:19 Q But not the engineering team?

17:40:20 A But not on the -- not on the engineering
17:40:22 team. We didn't spend time, significant amount of
17:40:26 time on doing research in 2000 -- in Q1 of 2007
17:40:32 research on other -- on -- on third-party video ID
17:40:35 vendor, for the reason I mentioned previously.

17:40:39 Q Okay. Let's go ahead and mark 30. Actually,
17:41:09 wait.

17:42:10 Do you recall, Mr. Chastagnol, a time when
17:42:16 Viacom or Paramount conducted tests of the YouTube
17:42:27 video fingerprinting solution?

17:42:29 A Yes, I do.

17:42:30 Q When was that?

17:42:33 A It was in summer 2007.

17:42:36 Q Do you remember what the results of those
17:42:38 tests were?

17:42:39 MR. INGBER: Objection to form.

17:42:40 THE WITNESS: No, I don't recall the result
17:42:44 of the testing of Paramount.

17:42:48 MR. DESANCTIS: Q. Do you recall whether you
17:43:05 were -- whether you -- well, actually, let me take
17:43:09 that back.